

STATE OF ALASKA

IBLA 75-222

Decided March 27, 1975

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting State selection application A-5314.

Affirmed.

1. Alaska: Land Grants and Selections: Generally -- Alaska Native Claims Settlement Act: Village Selections -- State Selections

The filing of a State selection under the Alaska Statehood Act does not create a right that prevents a Native village from selecting those lands under the terms of the Alaska Native Claims Settlement Act.

APPEARANCES: Dale P. Tubbs, Acting Director, Department of Natural Resources, State of Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The State of Alaska has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated October 21, 1974, rejecting State selection application A-5314 because the Ugashik Native Corporation selected all the land in the State selection as part of its selection under the Alaska Native Claims Settlement Act.

The State of Alaska contends that lands selected under the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. Prec. § 21 (1970), prior to the passage of the Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 688, 43 U.S.C. § 1601 *et seq.* (Supp. III, 1973), must be patented to the State of Alaska under the Statehood Act and cannot be withdrawn for, selected by and patented to a village corporation under ANCSA.

On December 27, 1968, the State of Alaska filed selection application A-5314 under section 6(b) of the Alaska Statehood Act for all the lands in T. 31 S., R. 50 W., Seward Meridian, subject to prior valid rights, claims and patented lands. On January 11, 1972, Alaska reasserted its intention to acquire title to all open available land in the township mentioned above. On June 16, 1972, Alaska amended the selection to include all land in the township excluding patented lands. The State selection application has not been tentatively approved.

[1] The Native village of Ugashik is also located in T. 31 S., R. 50 W., Seward Meridian, and was certified as an eligible Native village under ANCSA by the Bureau of Indian Affairs on September 14, 1973. On January 15, 1974, the Ugashik Native Corporation, the village corporation organized under ANCSA, selected all the available land in T. 31 S., R. 50 W., Seward Meridian, as part of their application AA-6708-A. According to the BLM decision, and undisputed by Alaska, Ugashik's selection involves less than 69,120 acres of land previously selected by the State of Alaska under the Statehood Act. ANCSA provides that each eligible Native village shall be entitled to select its proportionate entitlement in the township in which the village is located and certain other lands as prescribed. 43 U.S.C. § 1611 (Supp. III, 1973). ANCSA also specifically provides that a village selection may include lands in its selection that the State of Alaska had selected under the Statehood Act. 43 U.S.C. §§ 1610(a) (1), (2) and 1611(a)(1) (Supp. III, 1973); State of Alaska, 19 IBLA 178 (1975). Departmental regulation 43 CFR 2651.4(a)(1) also permits a Native village to select land previously selected by the State of Alaska.

* * * Village corporations * * * may not select more than:

(1) 69,120 acres from land that, prior to January 17, 1969, has been selected by or tentatively approved to, but not yet patented to the State under the Alaska Statehood Act
* * *.

The State selection application is not a right that is protected under other provisions of ANCSA from selection by a native village corporation. State of Alaska, supra.

Since all of the lands in State selection application A-5314 have been properly selected by Ugashik Native Corporation, and are no longer available for selection by the State of Alaska, the BLM properly rejected State application A-5314.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appeal from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

